Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1996

D. M. COHEN,

Petitioner,

vs.

EGIDIO TIRABASSI

Respondent.

Petition for a Writ of Certiorari to the

Maryland State Court of Appeals

PETITION FOR WRIT OF CERTIORARI

David M. Cohen
Pro Se Petitioner
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Columbia, Maryland 21044
410-997-2761

48 pp

QUESTIONS PRESENTED

I. Whether the district court for Howard County, Maryland deprived the Petitioner of his right to due process of law under the Fourteenth Amendment of the Constitution of the United States of America, the Maryland state constitution and state rules when it denied him full access to and possession of material evidence needed for his defense; denied him opportunity to introduce defense based on the Uniform Partnership Act and denied him the right to speak and defend himself at trial?

II. Whether the circuit court deprived the defendant of his right to due process of law under the Fourteenth Amendment of the Constitution of the United States of America, and the Maryland constitution, when it: failed to render prompt judgment of defendant's appeal; failed to insure that the district court had exercised and applied fundamental elements of due process; failed to cite law in its findings and order; and, failed to inform the defendant of his appeal rights?

III. Whether the state court declined to preserve the integrity of Article VI, § 2. and the Fourteenth Amendment of the Constitution of the United States of America; Maryland constitution and state laws, which are in harmony with the United States Constitution, when it deprived the defendant of his right to due process of law and when it condoned the expansion of authority by Chief Executive Officers' beyond that intended by the framers of the Uniform Partnership Act of 1914, stipulations of the Uniform Partnership Act of 1994, and recommendations of the National Conference of Commissioners on Uniform State Laws?

LIST OF PARTIES

Petitioner/Appellant:

D. M. Cohen, an Individual and small businessman

Respondent/Appellee:

Harry Siegel, Esquire, Counsel for Appellee, Egidio Tirabassi, an Individual and Chief Executive Officer of a small business.

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OPINIONS BELOW

The Maryland court of appeals declined to review the petition for writ of certiorari filed by petitioner D. M. Cohen ("Cohen") on July 15, 1996. (See Appendix A hereto). Petitioner Cohen's timely motion for rehearing was thereafter denied on February 12, 1997. (See Appendix B hereto).

The Maryland Circuit Court findings and order, from which this appeal is taken, is David M. Cohen vs Egidio Tirabassi and appears at Appendix C. The judgment of the Howard County district court appears at Appendix D and the district court's denial of petitioner's petition for rehearing/retrial was entered on February 15, 1995. (See Appendix E hereto). On May 7, 1997, the Clerk of the Supreme Court invoked Rule 1.1 giving the petitioner 60 days to resubmit this Petition for Writ of Certiorari to the Court. To the best of petitioner's knowledge, the opinions and decisions of the Maryland courts have not been published.

STATEMENT OF JURISDICTION

The decision being reviewed by this Court is the findings and order of the Howard County, Maryland's Circuit Court dated June 20, 1996. (See Appendix C hereto). The judgment from which the petitioner's appeal was initiated in the circuit court was the January 18, 1994, order entered into the record by the Howard County Maryland District Court. (See Appendix D hereto). The date on which the highest state court determined not to accept Cohen's petition for writ of certiorari was February 12, 1997. A copy of that order appears at Appendix B.

This Court has jurisdiction over the present case under and by virtue of 28 U.S.C. § 1257(a) of the United States Code. Moreover, Supreme Court Rule 10.1(a) states that jurisdiction is properly conferred "when a state court has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory

power." Further, Supreme Court Rule 10.1(c) states that jurisdiction is conferred when a "state court has decided an important question of federal law in a way that conflicts with relevant decisions of this Court."

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

Amendment XIV § 3 of the Constitution of the United States; Article VI § 2 of the Constitution of the United States; the Uniform Partnership Act (1994) -- General Statutory Note, Articles 1 and 4; State of Maryland Constitution Articles II, IV and XXIV; and Maryland Annotated Codes are relevant to this matter. Certain of these provisions, statutes or regulations are set out in the Statement of the Case, Reasons for Granting the Petition, and Appendix F. Petitioner reserves right to invoke 29 CFR Part 1614 and Robinson v. Shell 117 S. Ct. 843 (1997) later.

STATEMENT OF THE CASE

The question with respect to the Petitioner's being deprived of evidence needed to defend was addressed in the defendant's January 24, 1995, petition for rehearing/retrial of Case No. 2643-94 Egidio Tirabasi, Plaintiff, v. David Cohen, Defendant, p.2, which was filed in the district court of Howard County, Maryland. This constitutional issue was also addressed in defendant's February 16, 1995, notice of appeal and October 13, 1995, memo/brief which were filed in the circuit court of Howard County (95CA29053) -- R. The county courts denied Petitioner's motion for rehearing/retrial and his appeal. The deprivation of the Petitioner's right to due process was also referred to in his petition for writ of certiorari and supporting brief which were submitted to the state court of appeals and in Petitioner's motion for reconsideration which was submitted to the state court of appeals on December 4, 1996, -- R. (96-297). The state order denying defendant reconsideration was issued on February 12, 1997.

A. Background Information.

For purposes of this statement, the Petitioner David M. Cohen is the defendant and Egidio Tirabassi is the plaintiff and business Chief Executive Officer.

The defendant and the plaintiff entered into a 5 year partnership in 1985. They purchased three properties in Howard County, Maryland -- V.S. Plaintiff, Tr. 20. Two of the properties were to be used as rental units and the third property was and is the plaintiff's residence. Appropriate county licenses were obtained and the business partners operated and managed the properties under a verbal agreement as follows: 1) the plaintiff would retain all of the records and bookkeeping and release these documents to the defendant whenever the defendant wished to inspect or copy them -- Uniform Partnership Act (UPA) Art. 4 § 403(a); 2) the defendant would subsidize a portion of the monthly mortgage payments on the property that the plaintiff occupied for the five year business term; 3) the defendant would report as interest on his tax reports the money that he subsidized plaintiff's mortgage; 4) taxable interest on the rental properties would be shared equally; and, 5) they would sell the properties at an anticipated profit in 1990.

In May 1990, by mutual agreement, the defendant and the plaintiff extended their partnership for one year under the same terms and conditions except with refinancing, the plaintiff's monthly mortgage payments were reduced, therefore the defendant's subsidy was reduced from $300 a month to $183 a month. During the six year partnership term, the defendant participated as an equal in the management and operation of these holdings and shared equally with all property expenses and losses. From 1985 through 1991, the rentals did not generate any profits and the defendant did not benefit from them, nor did he benefit from the receipt of money that the plaintiff received when, at various times during the six year partnership term, the plaintiff subleased the unit in which

he lives. The plaintiff did not seek or get defendant's approval for sharing his living quarters with others.

At the end of the one year partnership extension period, May 1991, the defendant spoke with the plaintiff about terminating the business. The plaintiff refused absolutely and started to withhold from the defendant all of the partnership records -- lease agreements, mortgage interest forms, invoices, real estate tax bills, receipts of income, etc. -- V.S. Pl. Tr. 36; PA 35-10-408. Even though the plaintiff refused to end the partnership at the time mutually agreed; refused to release to the defendant partnership records, including interest statements for tax reporting purposes; and excluded the defendant from participating in the management of the partnership by withholding information about the property business, the defendant continued to contribute towards known expenses on the two rental properties through June 1993 -- R. Def. December 11, 1993, Letter to Pl. Nos. 1, 8, 3 and UPA Art. 1 General Provisions § 103 (b)(2); UPA Art. 4 Relations of Partners to Each Other and to Partnership § 403(b) and UPA Art. 4 Relations of Partners to Each Other and to Partnership § 401 (2)(f). From May 1991 through December 1993, the defendant, in writing and verbally, demanded to inspect the partnership records and to sell the properties. The plaintiff refused. The plaintiff's refusal to end the partnership as agreed in 1991 resulted in a loss to the business of $246,000 which, when divided equally, would have resulted in a profit of $123,000 for each partner -- UPA 35-10-408 General Statutory Note.

In November 1993, the plaintiff, by certified letter, asked the defendant for money to allegedly pay a tax bill, a bill which was not enclosed in his letter. The defendant's certified mail response to plaintiff listed several reasons for the need for them to completely dissolve their partnership including the plaintiff's failure to repay the defendant $800 that he had loaned him for refinancing the properties in 1990. This was defendant Cohen's third and last letter to plaintiff Tirabassi in which he demanded that their partnership end -- UPA Art. 1 General Provisions §102(b)(2).

The plaintiff did not respond to petitioner Cohen's letter -- R. Def. December 13, 1993, letter to E. Tirabassi and Def. Notice of Intention to Defend. Although the defendant could have filed a civil action against the plaintiff for breach of contract, for withholding partnership records, for not repaying the money defendant loaned for refinancing the properties, and for not sharing partnership profits, he did not.

B. Court Action.

In July 1994, three years after the partnership was to have ended, three years and three months after the plaintiff had refused to release partnership records to the defendant for inspection and for tax reporting purposes, and three years of plaintiff's not sharing rental profits with the defendant, the plaintiff filed a civil action against the defendant in the district court for Howard County. This unsigned complaint was filed by Particulars that alleged that the defendant owed the plaintiff one half of a $38,000 liability that had accrued on the partnership properties -- R., CA 2643-94, Pl. Particulars. On August 1, 1994, pursuant to Maryland Rule (Md. R.) 3-307, the defendant filed in Proper Person, (pro se), Notice of Intent to Defend -- R. CA 2643-94. The plaintiff did not respond to the notice with affidavit or documents to support his alleged $19,000 claim against the defendant -- R. Tr. 14.

On August 11, 1994, the defendant received by mail a court docket update notifying him that the merit trial scheduled for October 5, 1994, had been cancelled and rescheduled for November 2, 1994. No reason was given for this change and the defendant did not question the change. On October 1, 1994, the defendant exercised his partnership rights and demanded, by certified mail, that the plaintiff release all property bookkeeping and accounting records to his agent, an independent bookkeeper -- R. CA 2643-94, Def. October 1, 1994, letter to E. Tirabassi; UPA Art. 4 Relations of Partners to Each Other and to Partnership § 403(b). Because the plaintiff had not replied to defendant's notice to defend or to his October 1, 1994, request for

copies of property records and accounting, the defendant on October 17, 1994, filed a motion to delay the merit trial/hearing. On October 22, 1994, the defendant asked the Postal Service to trace his October 1, 1994, letter to the plaintiff. On October 24, the Postal Service returned the defendant's letter because the plaintiff had refused to accept it -- R. CA 2643-94. On October 26, 1994, the defendant received by mail a copy of the plaintiff's lawyer's letter to the court in which he explained his forthcoming tardiness at the November 2, 1994, hearing -- R. Siegal letter to the clerk of the court citing his need to be at the state court of special appeals on the morning of November 2, 1994 -- R. CA 2643-94. On October 27, 1994, the defendant filed a second motion to reschedule the hearing until mid-December 1994 to provide plaintiff time to submit proof of his claim and the defendant time to examine and verify the plaintiff's documents prior to trial -- R. CA 2643-94 (The defendant's October 17, 1994, motion was denied by the presiding trial jurist on November 7, 1994 -- R. CA 2643-94). On October 31, 1994, the defendant filed a motion with the court for Equity Accounting in which he asked the court to compel the plaintiff to submit to him and to the court records and documents to substantiate his claim prior to hearing or trial, (MR 3-308 -- Demand for Proof) -- R. CA 2643-94. The defendant in motion also requested that the hearing be rescheduled until the plaintiff had complied with this motion. Defendant Cohen's motion was granted on November 7, 1994, and the merit hearing/trial that had been scheduled for November 2, 1994, was rescheduled for January 18, 1995. When, after more than two months, the plaintiff had still not submitted documents to the defendant or to the court to support his claim, i.e. complied with the court's approved motion and the state's judicial code, defendant Cohen filed a motion to dismiss the case -- R. CA 2643-94, Def. January 17, 1995, motion to dismiss the case.

On January 18, 1995, the defendant reported to the court and learned that the civil action was not on the original judge's docket, but had been reassigned to the

district administrative judge. The defendant can only assume that the reassignment of judge was accomplished by 'ex parte' request made by the plaintiff because the defendant did not receive notice of, and the record does not reflect, any motion filed to disqualify the judge who had been originally assigned to this case. Further, the judge originally assigned the case was sitting on the bench on January 18, 1995, the day of the proceedings -- R.Tr. 12-13, Md. R. 3-505(a) and Md.R. 3-505(b).

On January 18, 1995, the plaintiff's counsel brought to the court room two copies of an approximately one-half inch plaintiff's Exhibit One. He gave a copy to the judge and kept a copy -- neither the defendant nor the clerk were given a copy of this Pl. Exhibit One. Even though the presiding judge gave the defendant five to ten minutes to review Pl. Exhibit One, it was not sufficient time for him to examine and verify the documents or the figures - R Tr. 12, 46. During the brief period of time that the defendant was given to review the Exhibit, he found several discrepancies in bills and invoices, lease agreements for the two rental properties were missing, and cancelled checks for tenant payments were missing -- R. Tr. 59-60. Moreover, the defendant could not find anything that would justify a $38,000 partnership indebtedness. The trial proceeded despite the defendant's expressed concerns to the court about not having ample time to review Pl. Ex. One -- R. Tr. V.S. Def. 18 -- and the denial of his motion to dismiss because the plaintiff had not provided documents to prove his claim prior to trial.

During the course of the proceedings, the presiding judge overtly displayed disdain towards the defendant; condescendingly made reference to his not being represented by counsel -- R. Tr. 4, 8; rejected the defendant's exhibits -- R. Tr. 66; disavowed knowledge of equity accounting and the rights of partners to participate in the management of business, i.e. pertinent Md. Ann. Code and the UPA - R. Tr. 4-6; prohibited the defendant from speaking in his defense, that is he actually cut defendant Cohen off mid-sentence some eleven times

during the relatively short proceeding -- R. Tr. 6, 7, 9, 17-18, 48, 49, 54, 55, 64, 65, 66 -- then changed the plaintiff's complaint from his having acquired a $38,000 partnership liability to requiring the defendant: 1) to pay a bill or bills for some thing or some things that are still not known to the defendant, and 2) to continue to subsidize plaintiff's mortgage, without tax reporting benefits, after the business partnership was to have ended. In addition, the court entered judgment the same day of the trial against the defendant for $11,724.35 with the provision that a lien could be placed on the defendant's residence -- R. CA 2643-94. Plaintiff Tirabassi subsequently placed a lien on the defendant's residence and this lien is still on the defendant's residence.

At no time after the January 18, 1995, proceedings was the defendant or the clerk of the court given a copy of plaintiff's Exhibit One -- Md. R. 3-516 Exhibits. Thus, material evidence exculpatory to the defendant has vanished. As a result, the defendant has been prohibited from possessing material evidence that was used against him, the same material that through routine partnership rights he is supposed to have. Even after the proceedings, the defendant could not gain possession of the evidence that was used against him, so as to be informed about the partnership, to determine if legitimate debts had, in fact, accrued, or to use for appeal in the circuit court, in the state court of appeals, this Supreme Court, or legislative arena.

On January 24, 1995, the defendant ordered the transcript and filed a petition for a retrial and request for delay of judgment. The plaintiff's attorney responded. The defendant's petition and request were reviewed and denied by the presiding trial judge -- R. Def. petition and motion, CA-2643-94 "JV Denied 2/14/95" marked on bottom page at right (*See* Appendix E).

The defendant filed notice of appeal with the circuit court for Howard County on February 16, 1995, and filed his Memorandum in Opposition on October 13, 1995. The delay between filing notice and filing memo/brief was due to the

unreadiness of the trial transcript, not the unreadiness of the defendant -- R. Def. April 10, 1995, motion for extension of time to file official transcript for appeal. The plaintiff did not respond to this appeal and argument was not scheduled or conducted. On June 20, 1996, nine (9) months after the defendant filed his memorandum of Opposition and seventeen (17) months after he filed Notice of Appeal, the circuit court issued its findings and order holding that "the issues do not warrant reversal of the District Court judgment." The court misinterpreted and distorted the defendant's rationale; convoluted the Maryland Rules; and in findings and order stated that there was significant reliance on the record (*See* Appendix C, page 4a no. 3). But, the record was incomplete because the plaintiff's Exhibit One was not ever made a part of the record. This court knew that the record was incomplete (R. Def Notice of Appeal, Basis for Appeal p. 2 and R. Appellant's Memo in Opposition to Decision of the District Court p. 6 no. 2).

On July 15, 1996, the defendant filed petition for writ of certiorari with the Maryland state court of appeals. Again, the plaintiff did not respond. The defendant's petition was denied on November 7, 1996, with statement that there was "no showing that review would be desirable and in the public interest." The Petitioner's motion for reconsideration, with request to compel Tirabassi to respond, was transmitted to the state court of appeals on December 4, 1996, and was denied, without explanation, on February 12, 1997.

REASONS FOR GRANTING THE PETITION

The Uniform Partnership Act was enacted in 1914 to insure uniformity in the standards for managing, operating, and conducting businesses and associations within all of these United States, except Louisiana. Maryland adopted this uniform model in 1914 to insure a sameness of the state's business practices with businesses, associations and corporations within its borders and those in the other United States. Even though some of the provisions of the Maryland Uniform Partnership Act have recently been

incorporated in the state's Annotated Code - Article of Corporations and Associations, CA, the provisions remain largely unchanged. It was the Uniform Partnership Act (UPA) that governed the partnership business of Appellant David M. Cohen and Appellee and Chief Executive Officer Egidio Tirabassi and it was the UPA which should have been employed in determining the outcome of this civil action -- UPA Art. 1 -- General Provisions -- § 102 Knowledge and Notice, and § 103(b)(2); Art. 4 Relations of Partners to Each Other and to Partnership § 403(a) and § 403(b).

I.

THE MARYLAND COURT DEPRIVED THE PETITIONER OF HIS PROCEDURAL RIGHT TO DUE PROCESS OF LAW UNDER ARTICLE VI § 2 AND THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

The district court of Howard County, Maryland, erred when it failed to insure that the plaintiff had provided specific facts in his claim and documentation to support his cause of action prior to trial. The defendant had a partnership right to know for what, when, how and why $38,000 in expenses had accrued on property that he co-owned with the plaintiff -- *Gillespie v. Goodyear Service Stores*, Supreme Court of North Carolina, 258 N.C. 128 S.E. 2d 762 (1963); *Campbell v. Welsh*, 54 Md. App. 614, 460 A.2d 76 (1983). The language of the Md. Ann. Code 1995 Maryland Rules of Procedure and Process (Md. RPP), Requirements, Rule 3-509(a)(2) in effect at time of trial and review was concise -- a plaintiff must introduce 'prima facie' evidence of the defendant's liability and prove damages when a defendant files a timely notice of intention to defend.

The record clearly indicates that plaintiff refused to respond to Cohen's demand for proof of his claim prior to trial; did not provide the defendant with a copy of his Exhibit One prior to trial or to use during proceedings, to review after proceedings or to maintain as part of his business partnership files, and he did not give a copy of this trial exhibit to the clerk of the court as required by law --

Md. Rule 3-516 Exhibits. Even though the defendant could not defend, the plaintiff did not prove that $38,000 in business expenses on the properties held jointly by him and by the defendant had accrued. The partnership did not accrue a $38,000 debt, i.e. plaintiff Tirabassi filed a bogus claim against defendant Cohen.

The district court deprived the defendant of due process of law under the Fourteenth Amendment of the U.S. Constitution when it did not apply the "fair trial rule" due process standard for defendants not represented by counsel. The presiding judge overtly demonstrated his disdain towards the defendant at onset of proceedings and throughout. He was discourteous, demeaning and took advantage of the defendant's pro se status by cutting him off repeatedly -- Rule 1231 and Code of Judicial Conduct Canon 3(4). He also embarrassed the defendant by accepting and acting on a false allegation lodged against him by plaintiff's lawyer. By discussing the defendant with the judge originally assigned to the case during a five to ten minute recess to verify or nullify the disparaging accusation made by the plaintiff's lawyer regarding the defendant's having engaged in unlawful 'ex parte' communication with the judge originally assigned the civil action, the presiding judge demonstrated predisposition to rely totally on the plaintiff's lawyer's verbiage to discredit defendant and anything that the defendant, a nonlawyer, would introduce or try to introduce, in his defense -- R. Tr. 12-13 et al. Even though the plaintiff lawyer's allegation was determined to be false, the judge made the defendant feel bad. His action set the tone for the defendant's being deprived of his right to due process of law at trial and thereafter.

The district court also erred if the presiding trial judge was acquired as a result of 'ex parte' communication between him, the plaintiff or the plaintiff's lawyer -- Md. R. 1-351 Order upon Ex Parte Application Prohibited -- Exceptions. Since the defendant did not file a request to disqualify the original judge and replace that judge with another, and since the judge assigned to the case initially was sitting on the bench the day of the trial, the defendant

should have been given a timely notice based on plaintiff motion and affidavit that a change of judges would serve the interest of fairness -- Md. R. 3-505 Disqualification of Judge. The defendant did not receive this required notice and the record does not reflect that the plaintiff filed a request to disqualify the judge originally assigned to the civil action.

The district court erred when it abrogated the terms and conditions of the defendant/plaintiff's contract -- *Dartmouth College v.Woodward*, 17 U.S. 518 (1819) -- when it "made" the plaintiff's cause of action for him. Although Petitioner acknowledges that judges are given broad judicial attitude to fashion appropriate remedies in partnership actions, the rule of law is concise: a judge may not assume the role of advocate in a trial over which he presides -- *Band's Refuse Removal, Inc. v. Borough of Fair Lawn*, N.J. Super. Ct., App. Div. 62 N.J. Super. 522, 163 A.2d 465 (1960) and Md. Code Ann. Judicial Conduct, Rule 1231, Canon 4.H. Arbitration. Should the plaintiff's complaint or alleged claim have been found ambiguous and the judge felt the need to interpret the facts, the law requires that findings be construed against the pleader, not the defendant -- *Continental Masonry Co. v. Verdel Constr. Co.*, 279 Md. 476, 369 A.2d 566 (1977) and *Read Drug & Chem. Co. v. Colwell Constr. Co.*, 250 Md. 406, 243 A.2d 548 (1968). Even if the district court based its findings on a breach of contract, it erred when it failed to recognize that it was the plaintiff who induced the breach when he refused to terminate the partnership by selling the properties in 1991 and it was the plaintiff who continued the breach of partnership agreement and violated the Uniform Partnership Act when he withheld records, profits including tax benefits, and information about these properties from the defendant prior to initiating the civil action. The court's action here is incompatible with the U.S. Constitution and the UPA.

II.

THE MARYLAND COURT DEPRIVED THE PETITIONER OF HIS RIGHT TO DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES AND FAILED TO ADHERE TO THE STATE CONSTITUTION.

The circuit court deprived the defendant of due process of law under the Fourteenth Amendment of the U.S. Constitution and the Maryland constitution when it did not render prompt decision. Md. const. art. IV, Judiciary Department, Part III Circuit Courts § 23 is absolutely clear:

> "The Judges of the respective Circuit Courts of the State shall render their decisions in all cases argued before them, or submitted for their judgment, within 2 months of the same shall have been so argued or submitted."

If the court had issued its decision within two months after it was submitted for review as required by the state constitution, the prevailing 1995 Maryland Rules would have mandated reversal of the district court judgment. When the court delayed the order for some nine months, the court was compelled to employ changed and less stringent 1996 Maryland Rules rules of evidence for a pleader's claim of action. (Note: The 1997 rules compel all plaintiff's to submit an itemized list of loss(es) incurred by persons sued). The plaintiff, Tirabassi, did not submit proof of his claim against Cohen to the district court and the circuit court's delay in rendering its findings and order deprived petitioner Cohen of his right to due process of law.

The circuit court erred when it stated that it "relied on the record". The record was, and is, incomplete because plaintiff Tirabassi did not insure that his trial Exhibit One became a part of the court files. The circuit court further erred when it: failed to cite law in its findings and order; failed to notify defendant of his appeal rights; and failed to insure that the lower court had applied and exercised the

fundamental elements of due process. The circuit court findings and order is severely flawed.

III.

THE MARYLAND COURT FAILED TO PRESERVE THE INTEGRITY OF ARTICLE VI § 2 AND THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES; MARYLAND CONSTITUTION; STATE LAWS; INCLUDING THE UNIFORM PARTNERSHIP ACT (1994).

The district court erred when it did not find that the plaintiff had violated basic principles of the Uniform Partnership Act (UPA) prior to his filing a civil action against the defendant, when he deliberately withheld property records, accounting and business information from the defendant for more than three years -- UPA Art. 4 Relations of Partners to Each Other and to Partnership § 403(b) and Md. Code Ann. 17 West M.L.E. Mutual Rights, Duties, and Liabilities of Partners (1960) -- § 72 Property Rights of Partners at 454; § 74 Control and Conduct of Business at 456 and § 77 Books of Account and Accounting at 458.

The district court's decision effected changes in the internal operation of the litigant's partnership agreement and prejudiced the defendant's right to have access to and possession of partnerships records, tax reporting benefits for the last year that the partnership was to have existed as well as subsequent years for which it ordered the defendant to subsidize the plaintiff's mortgage payments. The court also failed to insure that the defendant would receive an equal share of partnership profits -- UPA Art. 4 Relations of Partners to Each Other and to Partnership § 401(2)(b).

The state court of appeals deprived the defendant of his right to due process of law under the Fourteenth amendment of the United States of America, its own constitution, and Codes which are in harmony with the U.S. Constitution when it failed to uphold the Supreme law, existing statutes, its own rulings, and failed to protect its citizenry (business persons) from Chief Executive Officer takeovers. The state court also erred when it did not

consider compliance with the U.S. Constitution, Maryland Constitution, and consonant laws made by legislators to be in the public interest.

CONCLUSION

The district court vacated reasonable and lawful defendant motions for the plaintiff to provide proof of his claim prior to trial, i.e. denied the defendant sufficient time to prepare for his defense; presided at trial over a case where he admitted he was not familiar with the development, merits or pertinent laws related to the civil action -- R. Tr. 7, 5; refused to permit Cohen to introduce the UPA in his defense; and constructed a premise that favored the plaintiff, i.e. the law requires judgment for defendants when claims are ambiguous or open to two interpretations.

The circuit court harmed the defendant when it did not reply to his appeal in the time stipulated by the Md. const. art. IV, Judiciary Department, Part III Circuit Courts § 23. If the court had responded in proper time, the district court's judgment would have been reversed. It also erred when it misapplied the Md Rules, relied on an incomplete record, failed to cite law, or give "Cohen" notice of his appeal rights.

The state court of appeals callously denied defendant's petition and erred when it stated that the issues were not in the public interest. Thus, the court failed to comply with the Md. const. art. II as well the legal stipulations set forth in the UPA (1994). In addition, the court failed to acknowledge its own *Beeman v. D H &M Hy*, 107 Md. App. 122, 666 A.2d 1314 (1995), which states that "Due process of the Maryland constitution article XXIV and the Fourteenth amendment of the U.S. Constitution have the same meaning." The court also failed to recognize and respect its own Honorable Chief Justice John Marshall's premise that, "the end be legitimate, . . . within the scope of the Constitution . . . and consistent with the letter and spirit of the Constitution" -- *McCulloch v. Maryland*, 17 U.S. 316 (1819), (1938).

The findings of the Maryland proceedings and reviews are critical because they constitute changes in the state's judiciary's position with respect to the U. S. Constitution, its own laws and the Uniform Partnership Act (1994), i.e. the state's ruling grants unrestricted authority to Chief Executive Officers; diminishes the rights of partners, singularly and in mass, to be informed about their business accounts, accountings and day to day operations; and denies partners opportunity to participate in the management of business affairs or to share equally in business partnership, association or corporation profits. It grants Chief Executive Officers privilege to sue partners without having to specify cause of action. This case is a classic example of how the judiciary can eliminate fair and concise rules that exist to protect those who choose to engage in the conduct of business. The very nature this case affects the degree to which the federal and state judicial communities should involve themselves in changing the terms and conditions of existing business agreements and charters made between individuals and groups of individuals who make up corporate America. In essence, precedent set by the Maryland courts' action nullifies the Constitution in principle and voids basic and essential provisions of the Uniform Partnership Act (1994) as well as recommendations made by the National Conference of Commissioners on Uniform State Laws.

The Petitioner has been severely injured as a result of the Howard county judicial actions and the state court of appeals indifference to law. He has lost opportunity to gain a $123,000 profit from the sale of partnership properties at the time mutually agreed upon to sell them (1991); he has lost opportunity to sell his residence because of his Chief Executive Officer's $11,724.35 lien; he has lost $6,000 in estimated profits on rental collections that the plaintiff did not share with him after 1991; he has lost an estimated $7,000 in tax reporting benefits on two rental properties and plaintiff subsidized mortgage; and he has had to expend an estimated $2,950 in costs for this litigation. There has also been undeterminable loss in terms of his well

known good business reputation, and has acquired emotional stress because of the bogus civil action filed against him by his Chief Executive Officer, E. Tirabassi.

Petitioner requests that the judgment of the district Court of Howard County be vacated and Appellee E. Tirabassi be made to make full restitution to appellant Cohen; that the lien placed on his home by appellee Tirabassi be removed forthwith; that this Court supervise full and complete termination of the Tirabassi-Cohen partnership by immediate sale of the partnership properties; award petitioner costs of litigation; compel appellee Tirabassi to pay appellant unshared profits he collected from rental units from 1991 to the present time and tax report benefits that the Petitioner was unable to profit from because appellee Tirabassi refused to release the records to appellant Cohen; award punitive damages according to the Court's discretion; and supervise the foregoing actions.

For all of the reasons cited herein, the petitioner respectfully suggests that the Supreme Court agree to hear and decide this case on its merits and law. Unfortunately no other court, to date, has been willing to do so.

Respectfully submitted,

David M. Cohen

David M. Cohen
11861 Bright Passage
Columbia, MD 21044
410-997-2761

Date: June 12, 1997

APPENDIX A -- ORDER OF THE COURT OF APPEALS OF MARYLAND STATE FILED NOVEMBER 6, 1996.

David M. Cohen	*	In the
	*	
	*	Court of Appeals
	*	
v.	*	of Maryland
	*	
	*	Petition Docket No. 297
	*	
Egidio Tirabassi	*	September Term, 1996
	*	
	*	(No. 95CA29053, Circuit Court for Howard County)

ORDER

Upon consideration of the petition for a writ of certiorari and the supplement to the Circuit Court for Howard County, in the above entitles case, it is

ORDERED, by the Court of Appeals of Maryland,that the petition and supplement be, and they are hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ ROBERT M. BELL
Chief Judge

Date: November 7, 1996

APPENDIX B -- ORDER OF THE COURT OF APPEALS OF MARYLAND STATE FILED FEBRUARY 12th, 1997.

David M. Cohen	*	In the
	*	Court of Appeals
v.	*	of Maryland
	*	Petition Docket No. 297
Egidio Tirabassi	*	September Term, 1996
	*	(No. 95CA29053, Circuit Court for Howard County)

ORDER

Upon consideration of the motion for reconsideration, in the above entitled case, it is this 12th day of February, 1997

ORDERED, by the Court of Appeals of Maryland, that the motion be, and it is hereby, denied.

/s/ Robert M. Bell
Chief Judge

APPENDIX C -- FINDINGS AND ORDER OF THE CIRCUIT COURT OF HOWARD COUNTY, MARYLAND

ISSUED JUNE 19, 1996

Egidio Tirabassi Appellee	*	In the
	*	Circuit Court
v.	*	For
	*	Howard County
David M. Cohen Appellant	*	September Term, 1996
	*	95CA29053

Findings and Order

This case comes to this Court from the District Court for Howard County for an appeal on the record pursuant to Maryland Rule 7-101. On July 25, 1994, Mr. Tirabassi filed a Complaint in the District Court against Mr. Cohen in the amount of $19,000. Mr. Tirabassi alleged that he and Mr. Cohen were previously engaged in a partnership and that the $19,000 in damages represented Mr.Cohen's portion of partnership debts. Mr. Cohen filed a notice of intention to defend the Complaint against him. Trial was originally set for November 2, 1994, but was postponed by Judge Gelfman until January 18, 1995.

On January 18, 1995, Judge Vaughan conducted a trial on the merits of this case and judgment was entered for the Plaintiff, Mr. Tirabassi in the amount of $11,724.35 with costs of $10.00. Mr. Cohen timely noted his appeal to this Court Pursuant to Maryland Rule 7-113(f), this Court shall not set aside the judgment of the District Court on the evidence unless clearly erroneous.

Mr. Cohen's Memorandum presents six questions for review on appeal. Upon consideration of these issues, and careful review of the record, this Court finds that Mr. Cohen's issues do not warrant reversal of the District Court judgment. Therefore, for reasons more extensively discussed below, this Court affirms the District Court judgment.

The Appellant presents the following issues:

1. Mr. Cohen argues that the judgment should be overturned because the Plaintiff, Mr. Tirabassi, failed to file an affidavit and documents supporting the claim for damages in the Complaint as required by Maryland Rule 3-306(a). Maryland Rule 3-306, however, applies only to judgment upon an affidavit. In an action for money damages brought in the District Court, a plaintiff may file a demand for judgment on affidavit at the time of filing the complaint. In this case, Mr. Tirabassi did not seek a judgment upon affidavit. The judgment ultimately entered against Mr. Cohen was entered after a trial on the merits, not upon affidavit as prescribed by Rule 3-306. Therefore, Rule 3-306 does not apply in this case.

2. Secondly, Mr. Cohen argues that the trial should have been rescheduled pursuant to Maryland Rule 3-536 because Judge Vaughan was not familiar with the case to the extent that he could proceed to trial. Rule 3-536 applies only when a judge becomes disabled by reason of termination, absence, death, sickness or other inability to act. This situation was not present in the instant case, therefore, Rule 3-536 does not apply. The fact that this case was originally set before Judge Gelfman, postponed, then tried before Judge Vaughan does not provide grounds upon which reversal of the District Court judgment maybe granted.

3. Mr. Cohen's third question for review states, "[d]id the Appellee prove entitlement to Judgment and, if so, should the Appellant's residence have become an immediate part of the Judgment?" The Court interprets this question as a challenge to the sufficiency of the evidence, and finds that the record contains sufficient evidence in support of the

Judgment. Mr. Tirabassi's testimony regarding the existence of the agreement, the terms of the agreement, at least as they pertain to Mr. Cohen's obligation to pay $183.00 per month to Mr. Tirabassi, and Mr. Cohen's failure to comply with this part of the agreement, is corroborated by Mr. Cohen's own testimony. Further, Mr. Tirabassi's testimony concerning the remainder of the damages awarded was never specifically refuted by Mr. Cohen. Therefore, with due regard to the opportunity of the District Court to judge the credibility of the witnesses, this Court finds sufficient evidence in support of the Judgment of the District Court.

With regard to the question about Appellant's residence becoming an immediate part of the Judgment, this Court finds that the District Court rendered Judgment for the Plaintiff in the amount of $11,724.35 plus $10.00 in costs. The Judgment does not include any provisions with regard to Mr. Cohen's residence. However, under the Maryland Rules, once a judgment becomes final, the recording of the judgment constitutes a lien against the real estate owned by the debtor in the county the judgment is recorded in. The creditor may force sale of the debtor's property to satisfy the judgment.

4. Mr.Cohen contends that he did not receive legal Notice of a Lien Judgment as required by Maryland Rules 3-306(d) and 3-11(e). As previously discussed, Rule 3-306 applies only to judgments rendered on affidavit and is not applicable in this case. Maryland Rule 3-115(e) concerns attachment of real property prior to a judgment. The Plaintiff in this case, never attempted to attach any real property prior to the judgment entered on January 18, 1995, therefore, Rule 3-225(e) is not applicable.

5. & 6. Mr. Cohen's final two arguments concern alleged violations of the Maryland Lawyers' Rules of Professional Conduct by Plaintiff's counsel. Mr. Cohen alleges that the Plaintiff's law suit was entered in "bad faith", and that Plaintiff's counsel willfully misinformed the District Court in order to illegally solicit money from him.

Maryland Rule 1-341 provides that if the court finds that the conduct of any party in maintaining any proceeding was in "bad faith' or without substantial justification, the court may require the offending party or the attorney advising the conduct or both to pay to the adverse party the costs of the proceedings and the reasonable expenses. Mr. Cohen, however, failed to raise this issue prior to this appeal. He never argued that Mr. Tirabassi's claim was brought in bad faith either prior to trial or at trial, therefore, the issue has not been preserved for appeal.

With regard to alleged violations of the Maryland Lawyers' Rules of Professional Conduct, this Court lacks the authority to make rulings based on such allegations. Even if the allegations were true, the Rules of Professional Conduct do not provide grounds upon which this Court can overturn the judgment of the District Court.

For the reasons stated above, this Court denies Mr. Cohen's appeal, and affirms the judgment of the District Court.

June 19, 1996

/signed/
James B. Dudley
Judge

Copies to: Harry B.Siegel, Esquire
David Cohen, pro se

(Mailed 1/20/96)

APPENDIX D -- JUDGMENT OF DISTRICT COURT FOR HOWARD COUNTY ENTERED JANUARY 18, 1995

DISTRICT COURT OF MARYLAND FOR HOWARD COUNTY
3451 COURTHOUSE DR (V)
ELLICOTT CITY, MD 21043-4377 1001

CIVIL CASE NO.: 1001 - 0002643 - 94
COMPLAINT NO.: 001

TO: COHEN, DAVID
11861 BRIGHT PASSAGE
COLUMBIA, MD 21044

TIRABASSI, EGIDIO VS. COHEN, DAVID

DATE 01/18/95

JUDGMENT ENTERED

THE DISTRICT COURT OF MARYLAND AT THE ABOVE LOCATION HAS ENTERED JUDGMENT ON JANUARY 18, 1995 IN FAVOR OF THE PLAINTIFF AWARDING THE JUDGMENT AMOUNT OF $11,724.35, PRE-JUDGMENT INTEREST OF $00, ATTORNEY'S FEES OF $.00, AND COSTS OF $10.00 PLUS POST-JUDGMENT INTEREST AT LEGAL RATE.

THE PLAINTIFF TO ENFORCE THIS JUDGMENT MAY FILE FOR A LIEN ON ANY REAL PROPERTY OWNED BY THE DEFENDANT.

J1
006519A

APPENDIX E -- DISTRICT COURT'S DENIAL OF DEFENDANT'S PETITION FOR REHEARING/RETRIAL

ENTERED FEBRUARY 14, 1995

DISTRICT COURT OF MARYLAND FOR Howard County
CV 1001-002643-94
Complaint No.: 001

Plaintiff:

Egidio Tirabassi
6521 Sewells Orchard Drive
Columbia, Maryland 21044

Defendant:

David M. Cohen
11861 Bright Passage
Columbia, Maryland 21044

DEFENDANT'S PETITION FOR REHEARING/RETRIAL

I. Introduction

This case involves a monetary claim filed by the plaintiff, Egidio Tirabassi who initially claimed he incurred out of pocket expenses in the amount of 38,000.00 on jointly owned properties and who sought one half of this amount from the defendant.

On January 1, 1995 a hearing/trial on the captioned case was presided over by a visiting jurist from Carroll County who: a) denied the defendant's Motion to Dismiss dated January 17, 1995 because the plaintiff failed to obey the Court's Order (dated November 7, 1994) to provide the defendant and the Court equity accounting prior to hearing/trial, and b) entered quick judgment for plaintiff despite the plaintiff's failure to provide accounting;

Petition Denied
2/14/95
JV

respond to questioning or to provide factual evidence that the defendant owed him any money. Defendant's Motion to Dismiss was denied on January 18, and Judgment was entered for the plaintiff on January 18, 1995.

II. Basis for Petition

There are genuine procedural and serious legal issues to merit rehearing/retrial:

1. The defendant in the captioned case, David M. Cohen, requested and was granted a Motion to reschedule hearing date of November 2, 1994 to give the plaintiff ample time to submit proof of his claim by means of equity accounting. The defendant's Motion was granted and hearing was moved to January 18, 1995.

2. The plaintiff, Egidio Tirabassi, did not comply with the Court's November 7, 1994 Order to provide the Court and the defendant with proof of his claim prior to hearing in same manner as he refused to provide defendant with proof of his expenses or proof of property earnings not shared with the defendant prior to filing complaint.

3. The defendant filed a Motion to Dismiss on January 17, 1995 because the plaintinff was incontempt of the Court Order cited in (B.) above.

4. The captioned case was not on the Court docket January 18, 1995.

5. The Howard County jurist assigned to this case did not preside. Hearing/trial was conducted by a visiting administrative judge from Carroll County -- (reference Clerk of the Court.)

6. The Howard County jurist granted defendant's Motion for Equity Accounting but that Motion was overturned at hearing/trial by the reassigned visiting jurist. The defendant did not receive a written justification or timely notification

that his Motion for Equity Accounting would be disregarded at or by hearing.

7. The jurist reviewed the plaintiff's documents, but did not wish to review the defendant's documented evidence.

8. The plaintiff perjured himself several times during hearing/trial.

9. The plaintiff admitted at hearing that he had included management fees in his complaint before the Court, i.e. not all monies claimed was out of pocket expenses.

10. The judgment was not predicated upon fact or law.

WHEREFORE, the defendant prays that his petition for a rehearing/retrial be granted and that the Howard County District Court jurist assigned previously to this case resume presiding jurist duties.

Respectfully submitted,

David M. Cohen
Pro Se Litigant

January 24, 1995

APPENDIX F -- CONSTITUTIONAL AND STATUTORY PROVISIONS AND CASE LAW INVOLVED

U.S. Const. Art. VI, § 2:

> This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the Contrary notwithstanding.

U.S. Const. Amend. XXIV, § 3:

> " . . . nor shall any State deprive any person of life, liberty, or property without due process of law . . . "

6 Uniformed Laws Annotated, West Pub. Business and Nonprofit Organizations and Associations Law, Partnership Act, 1994:

> General Statutory Note:
>
> > 35-10-408. Partner's liability to partnership:
> >
> > > A partner is liable to the partnership for a breach of the partnership agreement if there is a violation of a duty to the partnership that causes harm to the partnership.
>
> Article 1. General Provisions:
>
> > § 102 Knowledge and Notice:
> >
> > > (b)(1) A person has notice of a fact if the person has received a notification of it
> >
> > § 103 Effect of Partnership Agreement; Nonwaivable Provisions:
> >
> > > (b)(2) The partnership shall not unreasonably restrict the right of access to books and records under Section 403(b)

APPENDIX F (continued):

6 Uniformed Laws Annotated, West Pub. Business and Nonprofit Organizations and Associations Law, Partnership Act, 1994 (continued):

Article 4. Relations of Partners to Each Other and to Partnership:

§ 401. Partners Rights and Duties:

(b) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

(f) Each partner has equal rights in the management and conduct of partnership business

§ 403. Partner's Rights and Duties With Respect to Information:

(a) A partnership shall keep its books and records, if any, at its chief executive office.

(b) A partnership shall provide partners and their agents and attorneys access to its books and records. . . .

Md. Const. Art. II:

The constitution of the United States and the laws made, or which shall be made in pursuance thereof, and all Treaties made, or which shall be made, under the authority of the United States, are, and shall be the Supreme Law of the State; and the Judges of this State, and all the people of this State, are, and shall be bound thereby, anything in the Constitution or Law of this State to the contrary notwithstanding.

APPENDIX F (continued):

Md. Const. Art IV, Judiciary Department, Part III Circuit Courts § 23:

> The Judges of the respective Circuit Courts of the State shall render their decisions in all cases argued before them, or submitted for their judgment, within 2 months of the same shall have been so argued or submitted.

Md. Code Ann.:

Judicial Conduct, Rule 1231, Canon 3(4):

> Judges should be patient, dignified, courteous to litigants, etc. . . . give parties full right to be heard.

Judicial Conduct, Rule 1231, Canon 4.H. Arbitration:

> Judges should not act as arbitrator or mediator.

Uniform Partnership Act/Corporation and Associations Article, CA, 17 West M.L.E. Ch. 4 Mutual Rights, Duties, and Liabilities of Partners (1960):

§ 72 Property Rights of Partners at 454:

> The property rights of a partner are his right in specific partnership property, his interest in the partnership and his right to participate in the management.

§ 74 Control and Conduct of Business at 456:

> The right of a partner to participate in the management is a property right and, subject to any agreement between them, all partners have equal rights in the management and control of the partnership business.

§ 77 Books of Account and Accounting at 458:

> Partnership books shall be kept, subject to any agreement between the partners, at the principal place of business, and every partner is entitled to inspect and copy them.

APPENDIX F (continued):

Maryland Rules (Md. R.):

Md. R. 3-308 Demand for Proof:

> When defendant desires to raise an issue of capacity of a party to sue or be sued . . . shall do so by Specific Demand for Proof. Court may continue trial for reasonable time to enable party to obtain the demanded proof.

Md. R. 1-351 Order upon Ex Parte Application Prohibited -- Exceptions:

> No court shall sign any order or grant any relief in an action upon an ex parte application unless (a) it complies with a rule, (b) the moving party has certified in writing that all parties who will be affected have been given notice of the time and place of presentation of the application to the court or that specified efforts commensurate with the circumstances have been made to give notice.

Md. R. 3-505 Disqualification of Judge:

> (a) Request for recusal -- action reassigned by administrative judge of district or person designated by administrative judge
>
> (b) Motion and Affidavit -- motion shall be accompanied by an affidavit alleging that the party cannot receive a fair and impartial trial before the assigned judge and setting forth reasonable grounds for the allegation. If motion is granted, the action shall be reassigned.

APPENDIX F (continued):

Maryland Rules (Md.R.) (continued):

Md. R. 3-509(a) Requirements (Md. R. of Practice and Procedure 1995):

> If a defendant makes timely Notice of Intention to Defend, the plaintiff shall be required to introduce 'prima facie' evidence of the defendant's liability and to prove damages

Md. R. 3-516 Exhibits:

> All exhibits marked for identification, whether or not offered in evidence, and if offered, whether or not admitted, shall form part of the record and, unless the court orders otherwise, shall remain in the custody of the clerk. With leave of court, a party may substitute a photograph or copy for any exhibit.

APPENDIX F (continued):

Band's Refuse Removal, Inc. v. Borough of Fair Lawn
N.J. Super. Ct., App. Div. 62 N.J. Super. 522, 163 A.2d 465 (1960)

A judge may not assume the role of advocate in a trial over which he presides. The power of a judge to take an active role in the trial of a case must be exercised with the greatest restraint. Courts must both be impartial and give the appearance of impartiality.

Beeman v. D H & M Hy
107 Md. App. 122, 666 A.2d 1314 (1995)

Due process of Md. const. art XXIV and the Fourteenth amendment of the U.S. Const. have the same meaning.

Campbell v. Welsh
54 Md. App. 614, 460 A.2d 76 (1983)

Although a complaint need not state minutely all circumstances which may conduce to prove the general charge, it is necessary to allege the cause of action with reasonable certainty, clearness and accuracy so as to apprise the defendant of the nature of the claim brought against him.

Continental Masonry Co. v. Verdel Constr. Co.
279 Md. 476, 369 A.2d 566 (1977)

Any ambiguity or want of certainty in allegations must be construed against the pleader.

APPENDIX F (continued):

Dartmouth College v. Woodward
17 U.S. 518 (1819)

New Hampshire legislature could not constitutionally alter the charter of Dartmouth College without its consent. Corporate charters fall within the confines of the contract clause. Business and commercial interests are immunized from unilateral governmental action abrogating the terms and conditions of contracts and agreements freely made.

Gillespie v. Goodyear Service Stores
Supr. Ct. N.C. 258 N.C. 128 S.E. 2d 762 (1963)

A complaint must contain a plain and concise statement of the facts constituting a cause of action. The requirement is that a complaint must allege the material, essential, and ultimate facts upon which plaintiff's right of action is based.

McCulloch v. Maryland.
17 U.S. 316 (1819)

"Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional."

Read Drug & Chem. Co. v. Colwell Constr. Co.
250 Md. 406, 243 A.2d 548 (1968)

Whenever a pleading is so doubtful and ambiguous as to be fairly capable of two interpretations, it will be construed most strongly against the party filing it.